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## CHAPTER 22A

### SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

#### SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

##### **7:22A-2.1 Applicability**

This subchapter establishes the Department's procedures and requirements governing the execution of every grant agreement pursuant to the Act. Any affected municipality or local government unit applying for a grant or having received a grant pursuant to the Act shall at a minimum conform with the requirements of this subchapter, as applicable.

##### **7:22A-2.2 Grant award agreements**

(a) Subsequent to the receipt of an application, the Department shall prepare and transmit the grant agreement for the grant award to the applicant.

(b) The grant agreement shall set forth the terms and conditions of the grant award, approved project scope, allowable costs, disbursement schedule, and approved commencement and completion dates for the project.

(c) The applicant shall execute the grant agreement within such period of time and pursuant to such terms and conditions as the Department may determine in its sole discretion.

(d) The grant agreement shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the grant agreement. A certified, true sealed copy of the authorizing resolution shall also be submitted to the Department at this time.

(e) The grant agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department in the application process.

(f) After the State has completed its internal processing and execution of the grant agreement, the Department shall transmit a copy of the executed grant agreement to the recipient.

(g) The State shall not execute a grant agreement if the applicant is in current default on any State loan.

##### **7:22A-2.3 Effect of grant awards**

(a) At the time of the execution of the grant agreement by the Department and the recipient, the grant award for the project shall become effective and shall constitute an

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obligation of moneys in the amount and for the purposes stated in the grant agreement.

(b) Cost overruns shall be the sole responsibility of the recipient. The award of funds shall not commit or obligate the Department to award any continuation or supplemental funds to cover cost overruns of the project.

(c) The award of funds by the State shall not be used as a defense by the recipient to any action by any agency for the recipient's failure to comply with the Act or to obtain all requisite permits, licenses and operating certificates.

#### **7:22A-2.4 Grant conditions**

(a) The following requirements, as well as such statutes, rules, terms and conditions which may be applicable, are conditions of each grant, and conditions to each disbursement under the grant agreement:

1. The recipient shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.;
2. The recipient shall certify that it and any party to a subagreement maintain their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;
3. The recipient of grants for combined sewer overflow and interconnection/cross-connection abatement projects shall comply with the rules entitled Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, N.J.A.C. 7:22-9;
4. The recipient shall comply with the permit requirements of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., N.J.A.C. 7:14A and any applicable New Jersey Pollutant Discharge Elimination System permit;
5. The Department shall not be liable for and the recipient shall pay the unallowable costs of the project and shall pay the allowable costs not covered by the grant agreement;
6. The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements. The recipient shall comply with any special conditions which the Department requires in the grant agreement or any amendment thereto;
7. The recipient shall comply with all applicable requirements of federal, State, and local laws, ordinances, rules and with the requirements of the grant agreement;
8. An amount of any grant disbursement equal to 100 percent of any unpaid portion of a finally determined State assessed civil administrative penalty pursuant to N.J.A.C. 7:14-8 shall be withheld until said penalty is paid in full;

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9. The recipient shall certify that it has not and shall not enter into any subagreement with, nor has any subagreement been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2 for any services within the scope of project work;
  10. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the grant agreement or approved amendments thereto;
  11. The recipient must submit proof that it and any party to a subagreement shall comply with all insurance requirements of the grant agreement and, when appropriate, certify that the insurance is in full force and effect and that the premiums have been paid;
  12. The recipient shall certify that it and any party to a subagreement shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and the rules promulgated pursuant thereto including but not limited to N.J.A.C. 17:27;
  13. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11; and
  14. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any grant agreement for the project in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.;
  15. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) governing public bodies or utilities created pursuant to New Jersey law to treat wastewater within the territorial boundaries of a service area and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);
  16. The recipient shall comply with the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10);
  17. No Fund moneys shall be disbursed to a local government unit which is in current default on any State loan. In order to facilitate full or partial payment of such defaulted loan obligation, the Department may, at its discretion, make a Fund disbursement where it determines that the affected municipality or local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such defaulted loan.
- (b) The recipient shall certify that it is in compliance with all other requirements and conditions of the grant agreement.

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(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Act.

(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

“This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection. Neither the State of New Jersey nor any of its departments, agencies, or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in N.J.A.C. 7:22A.”

(e) The recipient shall insert into any subagreements, and shall ensure that their contractor includes within their subcontracts, the following statement:

“In accordance with the provisions of N.J.S.A. 58:11B-26, the contractor (subcontractor) agrees to comply with all of the provisions of N.J.A.C. 7:22-9.”

#### **7:22A-2.5 Project changes and modifications to grant agreements**

(a) Due to the limited amount of funds available, there shall be no grant modification increasing the grant amount. Increased costs resulting from a grant modification shall be the responsibility of the recipient.

(b) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require modifications, including, but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of the project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and
6. Changes which may increase or decrease the total cost of a project.

(c) If the Department decides an amendment is necessary, the recipient shall be notified and a grant amendment shall be processed in accordance with N.J.A.C. 7:22A-2.6. If the Department decides a grant amendment is not necessary, it shall follow the procedures of

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N.J.A.C. 7:22A-2.7 or 2.8, as applicable.

#### **7:22A-2.6 Grant amendments**

(a) The Department shall require a grant amendment to change principal provisions of a grant agreement where project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof.

(b) The State and recipient shall effect a grant amendment only by a written amendment to the grant agreement executed by the State and the recipient.

#### **7:22A-2.7 Administrative changes**

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a nonsubstantial alteration of the disbursement schedule for grant moneys, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient from the Department as specified in the grant agreement.

#### **7:22A-2.8 Other changes**

All other project changes, which do not require a grant amendment as stated in N.J.A.C. 7:22A-2.6, shall be undertaken only upon written approval of the Department.

#### **7:22A-2.9 State disbursements**

Disbursement of grant funds shall be made as indicated in the grant agreement at intervals as work progresses and expenses are incurred by the recipient and approved by the Department. Total disbursements shall not exceed the cumulative grant moneys indicated in the disbursement schedule of the grant agreement or the allowable costs which have been incurred at that time. No disbursement, other than an advanced payment for preliminary mapping and inventory pursuant to N.J.A.C. 7:22A-3, shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department.

#### **7:22A-2.10 Assignment**

The right of a recipient to receive disbursements from the State under a grant agreement may not be assigned.

#### **7:22A-2.11 Unused funds**

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Where the total amount disbursed under a grant agreement is less than the initial grant award, the grant agreement amount shall be adjusted and the difference retained by the Fund to be reallocated to other projects.